

CLERK'S COPY.
Vol. VIII
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 7

FREDERICK H. ECKER, JOHN W. STEDMAN AND REEVE SCHLEY,
CONSTITUTING INTERNATIONAL BONDHOLDERS COMMITTEE,
PETITIONERS, *Intelligible*

WESTERN PACIFIC RAILROAD CORPORATION, A. C. JAMES CO.,
THE RAILROAD CREDIT CORPORATION, ET AL.

No. 8

CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND
SAMUEL ARMSTRONG, AS TRUSTEES UNDER THE WESTERN
PACIFIC RAILROAD COMPANY FIRST MORTGAGE, DATED JUNE
26, 1916, PETITIONERS,

vs.

WESTERN PACIFIC RAILROAD CORPORATION, THE WESTERN
PACIFIC RAILROAD COMPANY, IRVING TRUST COMPANY, ETC.,
ET AL.

No. 20

THE WESTERN PACIFIC RAILROAD COMPANY, PETITIONER,

vs.

FREDERICK H. ECKER, ET AL.

No. 33

RECONSTRUCTION FINANCE CORPORATION, PETITIONER,

vs.

WESTERN PACIFIC RAILROAD CORPORATION, A. C. JAMES CO.,
ET AL.

No. 61

IRVING TRUST COMPANY, AS SUBSTITUTED TRUSTEE UNDER
THE GENERAL AND REFUNDING MORTGAGE OF WESTERN
PACIFIC RAILROAD COMPANY, PETITIONER,

vs.

CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO, ET AL.,
ETC.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

PETITIONS FOR CERTIORARI FILED

DECEMBER 30, 1941.
JANUARY 17, 1942.
FEBRUARY 28, 1942.
MARCH 30, 1942.

CERTIORARI GRANTED APRIL 27, 1942.

No. 9714

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

In the Matter of

THE WESTERN PACIFIC RAILROAD COMPANY, a corporation, Debtor.

WESTERN PACIFIC RAILROAD CORPORATION, a corporation, THE WESTERN PACIFIC RAILROAD COMPANY, a corporation, and IRVING TRUST COMPANY, a corporation, as substituted Trustee under the General and Refunding Mortgage of Western Pacific Railroad Company, A. C. JAMES CO., a corporation, THE RAILROAD CREDIT CORPORATION, a corporation, Appellants,

VS.

INSTITUTIONAL BONDHOLDERS' COMMITTEE and RECONSTRUCTION FINANCE CORPORATION, CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO and SAMUEL ARMSTRONG, Trustees of the First Mortgage of the Western Pacific Railroad Company, a corporation, Appellees.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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The Western Pacific Railroad Company
Sacramento Northern Railway
Tidewater Southern Railway Company
OPERATING RESULTS—COMBINED
(All Inter-Company Items Eliminated)

Item or Account	Month of June				Period January 1 to June 30th			
	1941	1940	Increase or Decrease*		1941	1940	Increase or Decrease*	
			Amount	Per Cent			Amount	Per Cent
Average Mileage of Road Operated	1,536.19	1,549.79	13.60*	.88*	1,536.19	1,549.79	13.60*	.88*
Operating Revenues								
Freight	\$ 1,699,924.52	\$ 1,360,130.27	\$ 339,794.25	24.98	\$ 9,498,738.47	\$ 7,767,490.05	\$ 1,731,248.42	22.29
Passenger	98,875.60	88,581.43	10,294.17	11.62	383,987.48	365,749.33	18,238.15	4.99
Mail	3,000.00	3,408.95	408.95*	12.00*	18,012.29	21,344.02	3,331.73*	15.61*
Express	15,352.56	7,446.54	7,906.02	106.17	41,929.62	49,109.67	7,180.05*	14.62*
Dining Car, Hotel & Restaurant	11,749.85	9,085.78	2,664.07	29.32	48,698.49	32,861.97	15,836.52	48.19
Miscellaneous	23,333.86	19,507.85	3,826.01	19.61	119,633.93	107,066.51	12,567.42	11.74
Total Railway Operating Revenues	\$ 1,852,236.39	\$ 1,488,160.82	\$ 364,075.57	24.46	\$ 10,111,000.28	\$ 8,343,621.55	\$ 1,767,378.73	21.18
Operating Expenses								
Maintenance of Way & Structures	\$ 291,853.74	\$ 303,815.04	\$ 11,961.30*	3.94*	\$ 1,445,419.45	\$ 1,616,762.61	\$ 171,343.16*	10.60*
Maintenance of Equipment	340,050.32	230,366.00	109,684.32	47.61	1,788,853.93	1,374,440.47	414,413.46	30.15
Power	6,805.54	10,515.77	3,710.23*	35.28*	44,106.32	68,805.20	24,698.88*	35.90*
Traffic	78,814.82	69,772.51	9,042.31	12.96	428,663.50	395,607.99	33,055.51	8.36
Transportation—Rail Line	649,286.72	564,851.50	84,435.22	14.95	3,784,305.07	3,383,924.59	400,380.48	11.83
Miscellaneous Operations	13,907.42	13,233.76	673.66	5.09	67,621.09	56,777.01	10,844.08	19.10
General	66,565.24	59,981.26	6,583.98	10.98	381,924.88	382,206.04	281.16*	.07*
Transportation for Investment—Credit	1,048.41	412.03	636.38	154.45	2,878.89	1,202.06	1,676.83	139.50
Total Railway Operating Expenses	\$ 1,446,235.39	\$ 1,252,123.81	\$ 194,111.58	15.50	\$ 7,938,015.35	\$ 7,277,321.85	\$ 660,693.50	9.08
Net Revenue from Railway Operations	\$ 406,001.00	\$ 236,037.01	\$ 169,963.99	72.01	\$ 2,172,984.93	\$ 1,066,299.70	\$ 1,106,685.23	103.79
Excise and Use Tax Accruals	\$ 49,937.19	\$ 44,435.21	\$ 5,501.98	12.38	\$ 280,647.65	\$ 258,602.80	\$ 22,044.85	8.52
Railway Tax Accruals—All Other	51,540.82	52,798.81	1,257.99*	2.38*	350,312.04	321,857.14	28,454.90	8.84
Railway Operating Income	\$ 304,522.99	\$ 138,802.99	\$ 165,720.00	119.39	\$ 1,542,025.24	\$ 485,839.76	\$ 1,056,185.48	217.39
Hire of Equipment—Net Debit	\$ 101,700.87	\$ 73,859.68	\$ 27,841.19	37.69	\$ 627,365.00	\$ 527,361.94	\$ 100,003.06	18.96
Joint Facility Rents—Net Credit	16,693.53	17,711.25	1,017.72*	5.75*	48,073.63	50,773.49	2,699.86*	5.32*
Net Railway Operating Income	\$ 219,515.65	\$ 82,654.56	\$ 136,861.09	165.58	\$ 962,733.87	\$ 92,513.31	\$ 870,220.56	930.75
Non-Operating Income								
Rental of Property	\$ 32,289.42	\$ 22,246.45	\$ 10,042.97	45.14	\$ 182,856.90	\$ 140,785.49	\$ 42,071.41	29.88
Interest Accruals	3,440.37	2,431.84	1,008.53	41.47	19,688.73	13,612.05	6,076.68	44.64
Miscellaneous	11.00	1,352.50	1,341.50*	99.19*	919.31	1,492.76	573.45*	38.42*
Total Non-Operating Income	\$ 35,740.79	\$ 26,030.79	\$ 9,710.00	37.30	\$ 203,464.94	\$ 155,890.30	\$ 47,574.64	30.52
Gross Income	\$ 255,256.44	\$ 108,685.35	\$ 146,571.09	134.86	\$ 1,166,198.81	\$ 165,141.61	\$ 1,001,057.20	606.18
Miscellaneous Deductions								
Miscellaneous Rents	\$ 2,189.16	\$ 2,184.17	\$ 4.99	.23	\$ 13,715.35	\$ 13,737.94	\$ 22.59*	.16*

Railway Operating Income	\$ 304,322.99	\$ 138,802.99	\$ 165,420.00	119.39	\$ 1,542,025.24	\$ 485,839.46	\$ 1,056,185.48	217.39
Hire of Equipment—Net Debit	\$ 101,700.87	\$ 73,859.68	\$ 27,841.19	37.69	\$ 627,365.00	\$ 527,361.94	\$ 100,003.06	18.96
Joint Facility Rents—Net Credit	16,693.53	17,711.25	1,017.72*	5.75*	48,073.63	50,773.49	2,699.86*	5.32*
Net Railway Operating Income	\$ 219,515.65	\$ 82,654.56	\$ 136,861.09	165.58	\$ 962,733.87	\$ 9,251.31	\$ 953,482.56	—
Non-Operating Income								
Rental of Property	\$ 32,289.42	\$ 22,246.45	\$ 10,042.97	45.14	\$ 182,856.90	\$ 140,785.49	\$ 42,071.41	29.88
Interest Accruals	3,440.37	2,431.84	1,008.53	41.47	19,688.73	13,612.05	6,076.68	44.64
Miscellaneous	11.00	1,352.50	1,341.50*	99.19*	919.31	1,492.76	573.45*	38.42*
Total Non-Operating Income	\$ 35,740.79	\$ 26,030.79	\$ 9,710.00	37.30	\$ 203,464.94	\$ 155,890.30	\$ 47,574.64	30.52
Gross Income	\$ 255,256.44	\$ 108,685.35	\$ 146,571.09	134.86	\$ 1,166,198.81	\$ 165,141.61	\$ 1,001,057.20	606.18
Miscellaneous Deductions								
Miscellaneous Rents	\$ 2,189.16	\$ 2,184.17	\$ 4.99	.23	\$ 13,715.35	\$ 13,737.94	\$ 22.59*	.16*
Miscellaneous Tax Accruals	4,946.91	4,797.28	149.63	3.12	29,946.82	28,802.23	1,144.59	3.97
Miscellaneous	7,764.45	5,392.87	2,371.58	43.98	39,009.31	35,829.12	3,180.19	8.88
Total Miscellaneous Deductions	\$ 14,900.52	\$ 12,374.32	\$ 2,526.20	20.41	\$ 82,671.48	\$ 78,369.29	\$ 4,302.19	5.49
Available for Fixed Charges	\$ 240,355.92	\$ 96,311.03	\$ 144,044.89	149.56	\$ 1,083,527.33	\$ 86,772.32	\$ 996,755.01	—
Fixed Charges								
Rent for Leased Roads and Equipment	\$ 300.00	\$ 300.00	\$ —	—	\$ 1,800.00	\$ 1,800.00	\$ —	—
Interest on Funded Debt:								
First Mortgage Bonds (W.P.R.R.Co.)	\$ 205,375.41	\$ 205,375.41	\$ —	—	\$ 1,232,252.50	\$ 1,232,252.50	\$ —	—
Equipment Obligations	5,162.50	5,854.16	691.66*	11.81*	31,362.50	35,519.90	4,157.40*	11.70*
Trustees' Certificates	33,061.11	33,333.33	272.22*	.82*	198,991.66	200,000.00	1,008.34*	.50*
Other Obligations†	62,008.74	59,621.62	2,387.12	4.00	370,945.24	358,774.60	12,170.64	3.39
Interest on Unfunded Debt:								
Equipment Obligations (W.P.R.R.Co.)	523.25	838.55	315.30*	37.60*	3,237.92	5,427.84	2,195.92*	40.46*
Other Obligations	80.20	2,966.05	2,885.85*	97.30*	1,822.41	18,013.85	16,191.44*	89.88*
Amortization of Discount on Funded Debt:								
First Mortgage Bonds (W.P.R.R.Co.)	11,283.49	11,283.49	—	—	67,700.94	67,700.94	—	—
Equipment Obligations	80.76	107.67	26.91*	24.99*	490.04	724.22	234.18*	32.34*
Total Fixed Charges	\$ 317,875.46	\$ 319,680.28	\$ 1,804.82*	.56*	\$ 1,908,597.21	\$ 1,920,213.85	\$ 11,616.64*	.60*
Net Income	\$ 77,519.54*	\$ 223,369.25*	\$ 145,849.71	—	\$ 825,069.88*	\$ 1,833,441.53*	\$ 1,008,371.65	—

*Denote Red

†Interest on Funded Debt—Other Obligations" includes the following:

Accounting Department
San Francisco, California
August 5th, 1941

		Month		Period	
		1941	1940	1941	1940
Notes Payable	—Reconstruction Finance Corporation	\$12,176.71	\$12,176.71	\$ 73,466.16	\$ 73,872.03
"	—A. C. James Co.	20,832.50	20,832.50	124,995.00	124,995.00
"	—Railroad Credit Corporation	2,038.01	—	12,295.98	—
Advances	—The Western Pacific Railroad Corp.	22,894.80	22,894.80	137,368.05	137,368.05
"	—The Western Realty Company	208.35	208.35	1,250.00	1,250.00
"	—The Western Pacific Railroad Corporation to S. N. Ry.	3,585.90	3,509.26	21,297.58	21,289.52
S. N. Ry. Bonds	—Other than Bonds held by The Western Pacific Railroad Company	272.47	—	272.47	—
Total		\$62,068.74	\$59,621.62	\$370,945.24	\$358,774.60

[Endorsed]: Filed Aug 11, 1941. [1]

District Court of the United States
Northern District of California

**CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing page numbered from 1, inclusive, contain a full, true, and correct transcript of the supplemental records and proceedings in the matter of The Western Pacific Railroad Co., No. 26591-S in Bankruptcy, and forwarded in accordance with Order of Apr. 7, 1941, "For Correction of Record on Appeal, for Supplementing Record and Certification of Supplemental Record, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing supplemental transcript of record on appeal is the sum of Two Dollars and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 11th day of August A. D. 1941.

(Seal)

WALTER B. MALING,
Clerk.

E. H. NORMAN,
Deputy Clerk.

[Endorsed]: No. 9714. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 11, 1941. Paul P. O'Brien, Clerk.

The Western Pacific Railroad Company
Sacramento Northern Railway
Tidewater Southern Railway Company
OPERATING RESULTS—COMBINED
(All Inter-Company Items Eliminated)

Item or Account	Month of July				Period January 1 to July 31			
	1941	1940	Increase or Decrease*		1941	1940	Increase or Decrease*	
			Amount	Per Cent			Amount	Per Cent
Average Mileage of Road Operated	1,536.19	1,549.79	13.60*	.88*	1,536.19	1,549.79	13.60*	.88*
Operating Revenues								
Freight	\$ 1,932,800.89	\$ 1,450,413.00	\$ 482,387.89	33.26	\$ 1,431,539.36	\$ 9,217,903.05	\$ 2,213,636.31	24.01
Passenger	83,383.31	127,202.53	43,819.22*	34.45*	467,370.79	492,951.86	25,581.07*	5.19*
Mail	3,000.00	3,165.78	165.78*	5.24*	21,012.29	24,509.80	3,497.51*	14.27*
Express	5,549.73	2,758.63	2,791.10	101.18	47,479.35	51,868.30	4,388.95*	8.46*
Dining Car, Hotel & Restaurant	14,185.47	9,502.75	4,682.72	49.28	62,883.96	42,364.72	20,519.24	48.43
Miscellaneous	33,386.98	20,186.01	13,200.97	65.40	153,020.91	127,232.52	25,768.39	20.25
Total Railway Operating Revenues	\$ 2,072,306.38	\$ 1,613,228.70	\$ 459,077.68	28.46	\$ 12,183,306.66	\$ 9,956,850.25	\$ 2,226,456.41	22.36
Operating Expenses								
Maintenance of Way Structures	\$ 309,295.93	\$ 308,177.07	\$ 1,118.86	.36	\$ 1,754,715.38	\$ 1,924,939.68	\$ 170,224.30*	8.84*
Maintenance of Equipment	351,905.80	228,120.60	123,785.20	54.26	2,140,759.73	1,602,561.07	538,198.66	33.58
Power	8,253.54	12,705.47	4,451.93*	35.04*	52,359.86	81,510.67	29,150.81*	35.76*
Traffic	74,537.77	70,741.49	3,796.28	5.37	503,201.27	466,349.48	36,851.79	7.90
Transportation—Rail Line	692,776.77	599,867.04	92,909.73	15.49	4,477,081.84	3,983,791.63	493,290.21	12.41
Miscellaneous Operations	15,489.03	12,381.37	3,107.66	25.10	83,110.12	69,158.38	13,951.74	20.17
General	61,560.69	62,028.15	467.46*	.75*	443,485.57	441,234.19	2,251.38	.51*
Transportation for Investment—Credit	297.70	248.92	48.78	19.60	3,176.59	1,450.98	1,725.61	118.93
Total Railway Operating Expenses	\$ 1,513,521.83	\$ 1,293,772.27	\$ 219,749.56	16.99	\$ 9,451,537.18	\$ 8,571,094.12	\$ 880,443.06	10.27
Net Revenue from Railway Operations	\$ 558,784.55	\$ 319,456.43	\$ 239,328.12	74.92	\$ 2,731,769.48	\$ 1,385,756.13	\$ 1,346,013.35	97.13
Excise and Use Tax Accruals	\$ 52,268.28	\$ 46,601.92	\$ 5,666.36	12.16	\$ 332,915.93	\$ 305,204.72	\$ 27,711.21	9.08
Railway Tax Accruals—All Other	103,315.75	54,129.77	49,185.98	90.87	453,627.79	375,986.91	77,640.88	20.65
Railway Operating Income	\$ 403,200.52	\$ 218,724.74	\$ 184,475.78	84.34	\$ 1,945,225.76	\$ 704,564.50	\$ 1,240,661.26	176.09
Hire of Equipment—Net Debit	\$ 125,262.56	\$ 114,158.03	\$ 11,104.53	9.73	\$ 752,627.56	\$ 641,519.97	\$ 111,107.59	17.32
Joint Facility Rents—Net Credit	8,194.17	5,136.75	3,057.42	59.52	56,267.80	55,910.24	357.56	.64
Net Railway Operating Income	\$ 286,132.13	\$ 109,703.46	\$ 176,428.67	160.82	\$ 1,248,866.00	\$ 118,954.77	\$ 1,129,911.23	949.87
Non-Operating Income								
Rental of Property	\$ 34,320.05	\$ 24,239.81	\$ 10,080.24	41.59	\$ 217,176.95	\$ 165,025.30	\$ 52,151.65	31.60
Interest Accruals	3,458.53	2,424.18	1,034.35	42.67	23,147.26	16,036.23	7,111.03	44.34
Miscellaneous	45.00	449.85	404.85*	90.00*	964.31	1,942.61	978.30*	50.36*
Total Non-Operating Income	37,823.58	27,113.84	10,709.74	39.50	241,288.52	183,004.14	58,284.38	31.85
Gross Income	\$ 323,955.71	\$ 136,817.30	\$ 187,138.41	136.78	\$ 1,490,154.52	\$ 301,958.91	\$ 1,188,195.61	393.50

Net Railway Operating Income	\$ 286,132.13	\$ 109,703.46	\$176,428.67	160.82	\$ 1,248,866.00	\$ 118,954.77	\$ 1,129,911.23	949.87
Non-Operating Income								
Rental of Property	\$ 34,320.05	\$ 24,239.81	\$ 10,080.24	41.59	\$ 217,176.95	\$ 165,025.30	\$ 52,151.65	31.60
Interest Accruals	3,458.53	2,424.18	1,034.35	42.67	23,147.26	16,036.23	7,111.03	44.34
Miscellaneous	45.00	449.85	404.85*	90.00*	964.31	1,942.61	978.30*	50.36*
Total Non-Operating Income	37,823.58	27,113.84	10,709.74	39.50	241,288.52	183,004.14	58,284.38	31.85
Gross Income	\$ 323,955.71	\$ 136,817.30	\$187,138.41	136.78	\$ 1,490,154.52	\$ 301,958.91	\$ 1,188,195.61	393.50
Miscellaneous Deductions								
Miscellaneous Rents	\$ 2,174.17	\$ 2,194.17	\$ 20.00*	.91*	\$ 15,889.52	\$ 15,932.11	\$ 42.59*	.27*
Miscellaneous Tax Accruals	5,075.25	5,005.29	69.96	1.40	35,022.07	33,807.52	1,214.55	3.59
Miscellaneous	5,111.67	5,163.72	52.05*	1.01*	44,120.98	40,992.84	3,128.14	7.63
Total Miscellaneous Deductions	\$ 12,361.09	\$ 12,363.18	\$ 2.09*	.02*	\$ 95,032.57	\$ 90,732.47	\$ 4,300.10	4.74
Available for Fixed Charges	\$ 311,594.62	\$ 124,454.12	\$187,140.50	150.37	\$ 1,395,121.95	\$ 211,226.44	\$ 1,183,895.51	560.49
Fixed Charges								
Rent for Leased Roads and Equipment	\$ 300.00	\$ 300.00	\$ —	—	\$ 2,100.00	\$ 2,100.00	\$ —	—
Interest on Funded Debt:								
First Mortgage Bonds (W.P.R.R.Co.)	205,375.41	205,375.41	—	—	1,437,627.91	1,437,627.91	—	—
Equipment Obligations	5,162.50	5,854.18	691.68*	11.82*	36,525.00	41,374.08	4,849.08*	11.72*
Trustees' Certificates	33,019.44	33,333.33	313.89*	.94*	232,011.10	233,333.33	1,322.23*	.57*
Other Obligations†	62,255.29	60,144.32	2,110.97	3.51	433,200.53	418,918.92	14,281.61	3.41
Interest on Unfunded Debt:								
Equipment Obligations (W.P.R.R.Co.)	413.02	728.47	315.45*	43.30*	3,644.94	6,156.31	2,511.37*	40.79*
Other Obligations	356.86	3,039.73	2,682.87*	88.26*	2,179.27	21,053.58	18,874.31*	89.65*
Amortization of Discount on Funded Debt:								
First Mortgage Bonds (W.P.R.R.Co.)	11,283.49	11,283.49	—	—	78,984.43	78,984.43	—	—
Equipment Obligations	80.76	107.67	26.91*	24.99*	570.80	831.89	261.09*	31.39*
Total Fixed Charges	\$ 318,246.77	\$ 320,166.60	\$ 1,919.83*	.60*	\$ 2,226,843.98	\$ 2,240,380.45	\$ 13,536.47*	.60*
Net Income*	\$ 6,652.15*	\$ 195,712.48*	\$189,060.33	—	\$ 831,722.03*	\$ 2,029,154.01*	\$ 1,197,431.88	—

*Denote Red.

†"Interest on Funded Debt—Other Obligations" includes the following:

Accounting Department
San Francisco, California
September 4th, 1941

		Month		Period	
		1941	1940	1941	1940
Notes Payable	—Reconstruction Finance Corporation	\$12,582.61	\$12,582.61	\$ 86,048.77	\$ 86,454.64
"	—A. C. James Co.	20,832.50	20,832.50	145,827.50	145,827.50
"	—Railroad Credit Corporation	2,105.94	—	14,401.92	—
Advances	—The Western Pacific Railroad Corp.	22,894.65	22,894.65	160,262.70	160,262.70
"	—The Western Realty Company	208.32	208.32	1,458.32	1,458.32
"	—The Western Pacific Railroad Corporation to S. N. Ry.	3,585.90	3,626.24	24,883.48	24,915.76
S. N. Ry. Bonds	—Other than Bonds held by The Western Pacific Railroad Company	45.37	—	317.84	—
Total		\$62,255.29	\$60,144.32	\$433,200.53	\$418,918.92

[Endorsed]: Original filed Sep. 13, 1941
with Clerk, U. S. Dist. Court, San Francisco. [1]

District Court of the United States
Northern District of California

**CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing page, numbered 1, contain a full, true, and correct transcript of the supplemental records and proceedings in the matter of The Western Pacific Railroad Co., No. 26591-S in Bankruptcy, and forwarded in accordance with order of Apr. 7, 1941, for Correction of Record on Appeal, for Supplementing Record and Certification of Supplemental Record, as the same now remain on and of record in my office.

I further certify that the cost of preparing and certifying the foregoing supplemental transcript of record on appeal is the sum of Two Dollars and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 13th day of September A. D. 1941.

(Seal)

WALTER B. MALING,
Clerk.

By C. W. CALBREATH,
Deputy Clerk.

[Endorsed]: No. 9714. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sept. 13, 1941. Paul P. O'Brien, Clerk.

The Western Pacific Railroad Company
Sacramento Northern Railway
Tidewater Southern Railway Company
OPERATING RESULTS—COMBINED
(All Inter-Company Items Eliminated)

Item or Account	Month of August				Period January 1 to August 31			
	1941	1940	Increase or Decrease*		1941	1940	Increase or Decrease*	
			Amount	Per Cent			Amount	Per Cent
Average Mileage of Road Operated	1,536.19	1,549.79	13.60*	.88*	1,536.19	1,549.79	13.60*	.88*
Operating Revenues								
Freight	\$ 2,293,172.37	\$ 1,620,854.23	\$ 672,318.14	41.48	\$ 13,724,711.73	\$ 10,838,757.28	\$ 2,885,954.45	26.63
Passenger	80,648.12	107,190.03	26,541.91*	24.76*	548,018.91	600,141.89	52,122.98*	8.69*
Mail	3,000.00	3,173.29	173.29*	5.46*	24,012.29	27,683.09	3,670.80*	13.26*
Express	3,689.39	6,629.41	2,940.02*	44.35*	51,168.74	58,497.71	7,328.97*	12.53*
Dining Car, Hotel & Restaurant	15,963.64	9,753.81	6,209.83	63.67	78,847.60	52,118.53	26,729.07	51.29
Miscellaneous	31,211.18	20,428.50	10,782.68	52.78	184,232.09	147,681.02	36,551.07	24.75
Total Railway Operating Revenues	\$ 2,427,684.70	\$ 1,768,029.27	\$ 659,655.43	37.31	\$ 14,610,991.36	\$ 11,724,879.52	\$ 2,886,111.84	24.62
Operating Expenses								
Maintenance of Way and Structures	\$ 258,503.74	\$ 301,239.21	\$ 42,735.47*	14.19*	\$ 2,013,219.12	\$ 2,226,178.89	\$ 212,959.77*	9.57*
Maintenance of Equipment	301,959.25	254,950.36	47,008.89	18.44	2,442,718.98	1,857,511.43	585,207.55	21.50
Power	6,574.21	11,387.77	4,813.56*	42.27*	58,934.07	92,898.44	33,964.37*	36.56*
Traffic	69,279.73	67,384.61	1,895.12	2.81	572,481.00	533,734.09	38,746.91	7.26
Transportation—Rail Line	778,690.12	630,960.30	147,729.82	23.41	5,255,771.96	4,614,751.93	641,020.03	13.89
Miscellaneous Operations	18,663.70	12,530.68	6,133.02	48.94	101,773.82	81,689.06	20,084.76	24.59
General	63,753.49	69,879.95	6,126.46*	8.77*	507,239.06	514,114.14	6,875.08*	1.34*
Transportation for Investment—Credit	237.04	1,534.73	1,297.69*	84.55*	3,413.63	2,985.71	427.92	14.33
Total Railway Operating Expenses	\$ 1,497,187.20	\$ 1,346,798.15	\$ 150,389.05	11.17	\$ 10,948,724.38	\$ 9,917,892.27	\$ 1,030,832.11	11.23
Net Revenue from Railway Operations	\$ 930,497.50	\$ 421,231.12	\$ 509,266.38	120.90	\$ 3,662,266.98	\$ 1,806,987.25	\$ 1,855,279.73	102.67
Excise and Use Tax Accruals	\$ 54,349.44	\$ 48,052.21	\$ 6,297.23	13.10	\$ 387,265.87	\$ 353,256.93	\$ 34,008.44	9.63
Railway Tax Accruals—All Other	102,122.06	53,132.30	48,989.76	92.20	555,749.85	429,119.21	126,630.64	29.51
Railway Operating Income	\$ 774,026.00	\$ 320,046.61	\$ 453,979.39	141.85	\$ 2,719,251.76	\$ 1,024,611.11	\$ 1,694,640.65	165.39
Hire of Equipment—Net Debit	\$ 127,519.19	\$ 105,528.72	\$ 21,990.47	20.84	\$ 880,146.75	\$ 747,048.69	\$ 133,098.06	17.82
Joint Facility Rents—Net Credit	20,208.44	23,801.41	3,592.97*	15.10*	76,476.24	79,711.65	3,235.41*	4.06*
Net Railway Operating Income	\$ 666,715.25	\$ 238,319.30	\$ 428,395.95	179.70	\$ 1,915,581.25	\$ 357,274.07	\$ 1,558,307.18	436.16
Non-Operating Income								
Rental of Property	\$ 36,130.09	\$ 28,108.84	\$ 8,021.25	28.54	\$ 253,307.04	\$ 193,134.14	\$ 60,172.90	31.16
Interest Accruals	3,970.54	2,461.33	1,509.21	61.32	27,117.80	18,497.56	8,620.24	46.60
Miscellaneous	418.63	152.39	266.24	174.71	1,382.94	2,095.00	712.06*	33.99*
Total Non-Operating Income	\$ 40,519.26	\$ 30,722.56	\$ 9,796.70	31.89	\$ 281,807.78	\$ 213,726.70	\$ 68,081.08	31.85

Joint Facility Rents—Net Credit	20,208.44	23,801.41	3,592.97*	15.10*	76,476.24	79,711.65	3,235.41*	4.06*
Net Railway Operating Income	\$ 666,715.25	\$ 238,319.30	\$428,395.95	179.70	\$ 1,915,581.25	\$ 357,274.07	\$ 1,558,307.18	436.16
Non-Operating Income								
Rental of Property	\$ 36,130.09	\$ 28,108.84	\$ 8,021.25	28.54	\$ 253,307.04	\$ 193,134.14	\$ 60,172.90	31.16
Interest Accruals	3,970.54	2,461.33	1,509.21	61.32	27,117.80	18,497.56	8,620.24	46.60
Miscellaneous	418.63	152.39	266.24	174.71	1,382.94	2,095.00	712.06*	33.99*
Total Non-Operating Income	\$ 40,519.26	\$ 30,722.56	\$ 9,796.70	31.89	\$ 281,807.78	\$ 213,726.70	\$ 68,081.08	31.85
Gross Income	\$ 707,234.51	\$ 269,041.86	\$438,192.65	162.87	\$ 2,197,389.03	\$ 571,000.77	\$ 1,626,388.26	284.83
Miscellaneous Deductions								
Miscellaneous Rents	\$ 2,205.17	\$ 2,193.16	\$ 12.01	.55	\$ 18,094.69	\$ 18,425.27	\$ 30.58*	.17
Miscellaneous Tax Accruals	5,048.15	5,005.29	42.86	.86	40,070.22	33,814.81	1,257.41	3.24
Miscellaneous	1,726.82	1,463.39	263.43	18.00	45,847.80	42,456.23	3,391.57	7.99
Total Miscellaneous Deductions	\$ 8,980.14	\$ 8,661.84	\$ 318.30	3.67	\$ 104,012.71	\$ 99,394.31	\$ 4,618.40	4.65
Available for Fixed Charges	\$ 698,254.37	\$ 260,380.02	\$437,874.35	168.17	\$ 2,093,376.32	\$ 471,606.46	\$ 1,621,769.86	343.88
Fixed Charges								
Rent for Leased Roads and Equipment	\$ 300.00	\$ 300.00	\$ —	—	\$ 2,400.00	\$ 2,400.00	\$ —	—
Interest on Funded Debt:								
First Mortgage Bonds (W.P.R.R.Co.)	\$ 205,375.45	\$ 205,375.45	\$ —	—	\$ 1,643,003.36	\$ 1,643,003.36	\$ —	—
Equipment Obligations	5,162.50	5,854.16	691.66*	11.81*	41,687.50	47,228.24	5,540.74*	11.73*
Trustees' Certificates	32,977.78	33,333.34	355.56*	1.07*	264,988.88	266,666.67	1,667.79*	.63*
Other Obligations†	62,255.32	60,144.30	2,111.02	3.51	495,455.85	479,063.22	16,392.63	3.42
Interest on Unfunded Debt:								
Equipment Obligations (W.P.R.R.Co.)	383.13	698.70	315.57*	45.17*	4,028.07	6,855.01	2,826.94*	41.24*
Other Obligations	351.46	3,067.04	2,715.58*	88.54*	2,530.73	24,120.62	21,589.89*	89.51*
Amortization of Discount on Funded Debt:								
First Mortgage Bonds (W.P.R.R.Co.)	11,283.49	11,283.49	—	—	90,267.92	90,267.92	—	—
Equipment Obligations	80.76	107.67	26.91*	24.99*	651.56	939.56	288.00*	30.65*
Total Fixed Charges	\$ 318,169.89	\$ 320,164.15	\$ 1,994.26*	.62*	\$ 2,545,013.87	\$ 2,560,544.60	\$ 15,530.73*	.61*
Net Income	\$ 380,084.48	\$ 59,784.13*	\$439,868.61	—	\$ 451,637.55*	\$ 2,088,938.14*	\$ 1,637,300.59	—

*Denote Red

†“Interest on Funded Debt—Other Obligation” includes the following:

Accounting Department
San Francisco, California
October 1st, 1941

		Month		Period	
		1941	1940	1941	1940
Notes Payable	—Reconstruction Finance Corporation	\$12,582.58	\$12,582.58	\$ 98,631.35	\$ 99,037.22
“	—A. C. James Co.	20,832.50	20,832.50	166,660.00	166,660.00
“	—Railroad Credit Corporation	2,105.94	—	16,507.86	—
Advances	—The Western Pacific Railroad Corp.	22,894.65	22,894.65	183,157.35	183,157.35
“	—The Western Realty Company	208.33	208.33	1,666.65	1,666.65
“	—The Western Pacific Railroad Corporation to S. N. Ry.	3,585.90	3,626.24	28,469.38	28,542.00
S. N. Ry. Bonds	—Other than Bonds held by The Western Pacific Railroad Company	45.42	—	363.26	—
Total		\$62,255.32	\$60,144.30	\$495,455.85	\$479,063.22

[Endorsed]: Filed Oct. 10, 1941, Walter
B. Maling, Clerk. [1]

District Court of the United States
Northern District of California

**CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing page numbered 1, contain a full, true, and correct transcript of the supplemental records and proceedings in the Western Pacific Railroad Co., No. 26591-S in Bankruptcy, and forwarded in accordance with Order of Apr. 7, 1941, For Correction of Record on Appeal, for Supplementing Record and Certification of Supplement Record, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing supplemental transcript of record on appeal is the sum of Two Dollars and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 10th day of October A. D. 1941.

(Seal)

WALTER B. MALING,
Clerk.

E. H. NORMAN,
Deputy Clerk.

•[Endorsed]: No. 9714. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 10, 1941. Paul P. O'Brien, Clerk.

The Western Pacific Railroad Company
Sacramento Northern Railway
Tidewater Southern Railway Company
OPERATING RESULTS—COMBINED
(All Inter-Company Items Eliminated)

Item or Account	Month of September				Period January 1 to September 30			
	1941	1940	Increase or Decrease*		1941	1940	Increase or Decrease*	
			Amount	Per Cent			Amount	Per Cent
Average Mileage of Road Operated	1,536.19	1,549.79	13.60*	.88*	1536.19	1,549.79	13.60*	.88*
Operating Revenues								
Freight	\$ 2,612,273.76	\$ 1,961,870.11	\$ 650,403.65	33.15	\$ 16,336,985.49	\$ 12,800,627.39	\$ 3,536,358.10	27.63
Passenger	64,282.93	83,610.93	19,328.00*	23.12*	612,301.84	683,752.82	71,450.98*	10.45*
Mail	3,000.00	3,177.63	177.63*	5.59*	27,012.29	30,860.72	3,848.43*	12.47*
Express	6,364.90	5,265.06	1,099.84	20.89	57,533.64	63,762.77	6,229.13*	9.77*
Dining Car, Hotel & Restaurant	12,123.33	9,641.37	2,481.96	25.74	90,970.93	61,759.90	29,211.03	47.30
Miscellaneous	32,269.21	21,368.73	10,900.48	51.01	216,501.30	169,049.75	47,451.55	28.08
Total Railway Operating Revenues	\$ 2,730,314.13	\$ 2,084,933.83	\$ 645,380.30	30.95	\$ 17,341,305.49	\$ 13,809,813.35	\$ 3,531,492.14	25.57
Operating Expenses								
Maintenance of Way & Structures	\$ 257,398.01	\$ 244,465.20	\$ 12,932.81	5.29	\$ 2,270,617.13	\$ 2,470,644.09	\$ 200,026.96*	8.10*
Maintenance of Equipment	316,230.41	247,639.49	68,590.92	27.70	2,758,949.39	2,105,150.92	653,798.47	31.06
Power	6,808.25	10,467.48	3,659.23*	34.96*	65,742.32	103,365.92	37,623.60*	36.40*
Traffic	70,076.61	62,432.42	7,644.19	12.24	642,557.61	596,166.51	46,391.10	7.78
Transportation—Rail Line	853,588.29	668,441.95	185,146.34	27.70	6,109,360.25	5,283,193.88	826,166.37	15.64
Miscellaneous Operations	15,320.46	13,569.76	1,750.70	12.90	117,094.28	95,258.82	21,835.46	22.92
General	63,916.86	229,528.29	165,611.43*	72.15*	571,155.92	743,642.43	172,486.51*	23.19*
Transportation for Investment—Credit	2,022.42	461.99	1,560.43	337.75	5,436.05	3,447.70	1,988.35	57.67
Total Railway Operating Expenses	\$ 1,581,316.47	\$ 1,476,082.60	\$ 105,233.87	7.13	\$ 12,530,040.85	\$ 11,393,974.87	\$ 1,136,065.98	9.97
Net Revenue from Railway Operations	\$ 1,148,997.66	\$ 608,851.23	\$ 540,146.43	88.72	\$ 4,811,264.64	\$ 2,415,838.48	\$ 2,395,426.16	99.16
Excise and Use Tax Accruals	\$ 55,757.08	\$ 45,475.98	\$ 10,281.10	22.61	\$ 443,022.45	\$ 398,732.91	\$ 44,289.54	11.11
Railway Tax Accruals—All Other	101,398.23	51,334.71	50,063.52	97.52	657,148.08	480,453.92	176,694.16	36.78
Railway Operating Income	991,842.35	512,040.54	479,801.81	93.70	3,711,094.11	1,536,651.65	2,174,442.46	141.51
Hire of Equipment—Net Debit	191,232.51	157,912.83	33,319.68	21.10	1,071,379.26	904,961.52	166,417.74	18.39
Joint Facility Rents—Net Credit	22,220.15	15,029.92	7,190.23	47.84	98,696.39	94,741.57	3,954.82	4.17
Net Railway Operating Income	\$ 822,829.99	\$ 369,157.63	\$ 453,672.36	122.89	\$ 2,738,411.24	\$ 726,431.70	\$ 2,011,979.54	276.97
Non-Operating Income								
Rental of Property	\$ 26,456.36	\$ 26,627.97	\$ 171.61*	.64*	\$ 279,763.40	\$ 219,762.11	\$ 60,001.29	27.30
Interest Accruals	4,405.39	2,765.21	1,640.18	59.31	31,523.19	21,262.77	10,260.42	48.26
Miscellaneous	22.00	37,614.27	37,592.27*	99.94*	1,404.94	39,709.27	38,304.33*	96.46*
Total Non-Operating Income	\$ 30,883.75	\$ 67,007.45	\$ 36,123.70*	53.91*	\$ 312,691.53	\$ 280,734.15	\$ 31,957.38	11.38
Gross Income	\$ 853,713.74	\$ 436,165.08	\$ 417,548.66	95.73	\$ 3,051,102.77	\$ 1,007,165.85	\$ 2,043,936.92	202.94
Miscellaneous Deductions								
Miscellaneous Rents	\$ 2,176.66	\$ 2,476.66	\$ 300.00*	12.11*	\$ 20,271.35	\$ 20,601.93	\$ 330.58*	1.60*
Miscellaneous Tax Accruals	5,048.15	5,005.29	42.86	.86	45,118.37	43,818.10	1,300.27	2.97

Net Railway Operating Income	\$ 822,829.99	\$ 369,157.63	\$453,672.36	122.89	\$ 2,738,411.24	\$ 726,431.70	\$ 2,011,979.54	276.97
Non-Operating Income								
Rental of Property	\$ 26,456.36	\$ 26,627.97	\$ 171.61*	64*	\$ 279,763.40	\$ 219,762.11	\$ 60,001.29	27.30
Interest Accruals	4,405.39	2,765.21	1,640.18	59.31	31,523.19	21,262.77	10,260.42	48.26
Miscellaneous	22.00	37,614.27	37,592.27*	99.94*	1,404.94	39,709.27	38,304.33*	96.46*
Total Non-Operating Income	\$ 30,883.75	\$ 67,007.45	\$ 36,123.70*	53.91*	\$ 312,691.53	\$ 280,734.15	\$ 31,957.38	11.38
Gross Income	\$ 853,713.74*	\$ 436,165.08	\$417,548.66	95.73	\$ 3,051,102.77	\$ 1,007,165.85	\$ 2,043,936.92	202.94
Miscellaneous Deductions								
Miscellaneous Rents	\$ 2,176.66	\$ 2,476.66	\$ 300.00*	12.11*	\$ 20,271.35	\$ 20,601.93	\$ 330.58*	1.60*
Miscellaneous Tax Accruals	5,048.15	5,005.29	42.86	.86	45,118.37	43,818.10	1,300.27	2.97
Miscellaneous	18,324.50*	33,263.62*	14,939.12	—	27,523.30	9,192.61	18,330.69	199.41
Total Miscellaneous Deductions	\$ 11,099.69*	\$ 25,781.67*	\$ 14,681.98	—	\$ 92,913.02	\$ 73,612.64	\$ 19,300.38	26.22
Available for Fixed Charges	\$ 864,813.43	\$ 461,946.75	\$402,866.68	87.21	\$ 2,958,189.75	\$ 933,553.21	\$ 2,024,636.54	216.87
Fixed Charges								
Rent for Leased Roads and Equipment	\$ 300.00	\$ 300.00	\$ —	—	\$ 2,700.00	\$ 2,700.00	\$ —	—
Interest on Funded Debt:								
First Mortgage Bonds (W.P.R.R.Co.)	\$ 205,375.41	\$ 205,375.41	\$ —	—	\$ 1,848,378.77	\$ 1,848,378.77	\$ —	—
Equipment Obligations	5,162.50	5,854.16	691.66*	11.81*	46,850.00	53,082.40	6,232.40*	11.74*
Trustees' Certificates	32,936.11	33,333.33	397.22*	1.19*	297,924.99	300,000.00	2,075.01*	.69*
Other Obligations†	61,781.51	59,621.45	2,160.06	3.62	557,237.36	538,684.67	18,552.69	3.44
Interest on Unfunded Debt:								
Equipment Obligations (W.P.R.R.Co.)	378.62	694.32	315.70*	45.47*	4,406.69	7,549.33	3,142.64*	41.63*
Other Obligations	322.43	2,984.74	2,662.31*	89.20*	2,853.16	27,105.36	24,252.20*	89.47*
Amortizations of Discount on Funded Debt:								
First Mortgage Bonds (W.P.R.R.Co.)	11,283.49	11,283.49	—	—	101,551.41	101,551.41	—	—
Equipment Obligations	80.76	107.67	26.91*	24.99*	732.32	1,047.23	314.91*	30.07*
Total Fixed Charges	\$ 317,620.83	\$ 319,554.57	\$ 1,933.74*	.61*	\$ 2,862,634.70	\$ 2,880,099.17	\$ 17,464.47*	.61*
Net Income	\$ 547,192.60	\$ 142,392.18	\$404,800.42	284.29	\$ 95,555.05	\$ 1,946,545.96*	\$ 2,042,101.01	—

*Denote Red

†"Interest on Funded Debt—Other Obligations" includes the following:

Accounting Department.
San Francisco, California
November 4th, 1941

		Month		Period	
		1941	1940	1941	1940
Notes Payable	—Reconstruction Finance Corporation	\$12,176.71	\$12,176.71	\$110,808.06	\$111,213.93
"	—A. C. James Co.	20,832.50	20,832.50	187,492.50	187,492.50
"	—Railroad Credit Corporation	2,038.00	—	18,545.86	—
Advances	—The Western Pacific Railroad Corp.	22,894.65	22,894.65	206,052.00	206,052.00
"	—The Western Realty Company	208.33	208.33	1,874.98	1,874.98
"	—The Western Pacific Railroad Corporation to S. N. Ry.	3,585.90	3,509.26	32,055.28	32,051.26
S. N. Ry. Bonds	—Other than Bonds held by The Western Pacific Railroad Company	45.42	—	408.68	—
Total		\$61,781.51	\$59,621.45	\$557,237.36	\$538,684.67

[Endorsed]: Filed Nov. 12, 1941. [1]

District Court of the United States
Northern District of California.

**CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing page numbered 1, *inclusive*, contain a full, true, and correct transcript of the records and proceedings in the matter of The Western Pacific Railroad Co., No. 26591-S in Bankruptcy, and forwarded in accordance with the order of Apr. 7, 1941, "For Correction of Record on Appeal, for Supplementing Record and Certification of Supplemental Record" as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing supplemental transcript of record on appeal is the sum of Two (2) Dollars and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 14th day of November A. D. 1941.

(Seal)

WALTER B. MALING,

Clerk.

E. H. NORMAN,

Deputy Clerk.

[Endorsed]: #9714, Filed Nov. 14, 1941. Paul P. O'Brien, Clerk.

No. 9714

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

In the Matter of
THE WESTERN PACIFIC RAILROAD COMPANY, a corporation,
Debtor.

WESTERN PACIFIC RAILROAD CORPORATION, a corporation,
THE WESTERN PACIFIC RAILROAD COMPANY, a corporation,
and **IRVING TRUST COMPANY**, a corporation,
as substituted Trustee under the General and Refunding Mortgage of Western Pacific Railroad Company,
A. C. JAMES CO., a corporation,
THE RAILROAD CREDIT CORPORATION, a corporation,
Appellants,

vs.

INSTITUTIONAL BONDHOLDERS COMMITTEE and
RECONSTRUCTION FINANCE CORPORATION,
CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO and **SAMUEL ARMSTRONG**, Trustees of
the First Mortgage of the Western Pacific Railroad Company, a corporation,

Appellees.

Upon Appeals from the District Court of the United States for the Northern District of California,
Southern Division.

PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, July 28,
1941.

Before: Denman, Mathews and Stephens, Circuit
Judges.

[Title of Cause.]

ORDER DIRECTING ARGUMENT, etc.

Ordered appeals herein argued by Mr. Frank C. Nicodemus, Jr., counsel for appellant The Western Pacific Railroad Company; and by Mr. M. C. Sloss, counsel for appellant, The Western Pacific Railroad Corporation; by Robert E. Coulson, counsel for appellant, A. C. James Co., and by Mr. Edward G. Buckland, counsel for appellant The Railroad Credit Corporation; and by Mr. Robert T. Swaine, counsel for appellee The Institutional Bondholders Committee, and continued to tomorrow for further argument.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday, July 29,
1941.

Before: Denman, Mathews and Stephens, Circuit
Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeals in above causes further argued by Mr. Robert T. Swain, counsel for appellee Institutional Bondholders Committee; by Mr. C. M. Clay, Assistant General Counsel, Reconstruction Finance Corporation, counsel for appellee Reconstruction Finance Corporation; and by Mr. Orville W. Wood, counsel for appellees Crocker First National Bank of San Francisco, et al.; and by Mr. Orrin G. Judd, counsel for appellant Irving Trust Company, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, November 28, 1941.

Before: Denman, Mathews and Stephens, Circuit Judges.

ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF DECREE

By direction of the Court, Ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Appeals from the District Court of the United States for the Northern District of California, Southern Division.

OPINION

Before Denman, Mathews and Stephens, Circuit Judges.

Mathews, Circuit Judge:

These appeals are from an order of the District Court which, in a proceeding by The Western Pacific Railroad Company, a railroad corporation (hereafter called the debtor), under § 77 of the Bankruptcy Act, 11 U.S.C.A. § 205, approved a

plan of reorganization which had been approved and certified to the court by the Interstate Commerce Commission.² The debtor has outstanding:

1. Trustees' certificates issued pursuant to paragraph (3) of subsection (c) of § 77 in the principal sum of \$10,000,000. These certificates are owned and held by Reconstruction Finance Corporation.³

2. First mortgage 5% bonds dated June 26, 1916, due March 1, 1946, in the principal sum of \$49,290,100, with accrued and unpaid interest⁴ thereon of \$13,143,776—a total of \$62,433,876—secured by a mortgage (hereafter called the first mortgage) of which Samuel Armstrong and Crocker First National Bank of San Francisco are trustees.

3. General and refunding mortgage 5% bonds (hereafter called refunding bonds) dated January 1, 1932, due January 1, 1957, in the principal sum of \$18,999,500, secured by a mortgage (hereafter called the refunding mortgage) of which Irving Trust Company is trustee.⁵ These bonds are pledged to secure payment of the notes hereafter mentioned. They have not been issued for any other purpose.

4. Notes in the principal sum of \$2,963,000, with accrued and unpaid interest thereon of \$899,870—a total of \$3,862,870—secured by the pledge of re-

(2) 233 I.C.C. 409, 441-455.

(3) 122 F.2d 807.

(4) As of January 1, 1939, the effective date of the plan.

(5) Irving Trust Company succeeded The Chase National Bank as trustee on November 13, 1936.

funding bonds in the principal sum of \$10,750,000 and other collateral. These notes are owned and held by Reconstruction Finance Corporation.

5. Notes in the principal sum of \$2,445,610, with accrued and unpaid interest thereon of \$146,503⁸—a total of \$2,592,113—secured by the pledge of re-funding bonds in the principal sum of \$4,000,000 and other collateral. These notes are owned and held by Railroad Credit Corporation.

6. Notes in the principal sum of \$4,999,800, with accrued and unpaid interest thereon of \$1,249,950—
a total of \$6,249,750—secured by the pledge of re-funding bonds in the principal sum of \$4,249,500 and other collateral. These notes are owned and held by A. C. James Company.

7. Unsecured indebtedness to The Western Realty Company in the principal sum of \$50,000, with accrued and unpaid interest thereon of \$11,667—a total of \$61,667.

8. Unsecured indebtedness to The Western Pacific Railroad Corporation (hereafter called the holding company) in the principal sum of \$5,768,791, with accrued and unpaid interest thereon of \$1,980,429—a total of \$7,749,220.

9. Six per cent preferred stock of the par value of \$28,300,000 (283,000 shares of the par value of \$100 each) owned and held by the holding company.

(6) These are the Commission's figures (233 I.C.C. 452). They differ slightly from those mentioned in the court's opinion (34 F. Supp. 497).

10. Common stock of the par value of \$47,500,000 (475,000 shares of the par value of \$100 each) owned and held by the holding company.

The plan provides, in effect, that the above mentioned securities and obligations shall be canceled and that, in lieu thereof, the reorganized company shall issue new first mortgage 4% bonds dated January 1, 1939, due January 1, 1974, in the principal sum of \$10,000,000, secured by a new first mortgage; income mortgage 4½% bonds (hereafter called income bonds) dated January 1, 1939, due January 1, 2014, in the principal sum of \$21,219,075, secured by a so-called income mortgage; new 5% preferred stock of the par value of \$31,850,297 (318,502.97 shares of the par value of \$100 each); and 319,441 shares of new common stock without par value. These securities are to be distributed as follows:

To Reconstruction Finance Corporation, \$10,000,000 of the new first mortgage bonds,⁸ \$1,185,200 of income bonds, \$1,777,800 of new preferred stock and 15,788 shares of new common stock;⁹ to the

(7) The reorganized company may be the debtor or a new corporation to which all assets of the debtor shall be transferred.

(8) Thus the \$10,000,000 of receivers' certificates now held by Reconstruction Finance Corporation would be exchanged for new first mortgage bonds, dollar for dollar.

(9) Thus, for each \$1,000 of indebtedness evidenced by notes now held by it, Reconstruction Finance Corporation would receive \$306.82 of income bonds, \$460.12 of new preferred stock and 4.087 shares of new common stock.

holders of first mortgage bonds now outstanding, \$19,716,040 of income bonds, \$29,574,060 of new preferred stock and 230,593 shares of new common stock;¹⁰ to Railroad Credit Corporation, \$154,111 of income bonds, \$241,681 of new preferred stock and 35,425 shares of new common stock;¹¹ to A. C. James Company, \$163,724 of income bonds, \$256,756 of new preferred stock and 37,635 shares of new common stock.¹² The Western Realty Company and the holding company are excluded from participation in the reorganization.

Objections to the plan were filed by the debtor, the refunding mortgage trustee, the holding company, Railroad Credit Corporation, A. C. James Company, The Western Realty Company and a bondholders' committee¹³ representing holders of some of the first mortgage bonds now outstanding.

(10) Thus, for each \$1,000 of indebtedness evidenced by first mortgage bonds now outstanding, holders thereof would receive \$315.79 of income bonds, \$473.69 of new preferred stock and 3.693 shares of new common stock.

(11) Thus, for each \$1,000 of indebtedness evidenced by notes now held by it, Railroad Credit Corporation would receive \$59.45 of income bonds, \$93.24 of new preferred stock and 13.666 shares of new common stock.

(12) Thus, for each \$1,000 of indebtedness evidenced by notes now held by it, A. C. James Company would receive \$26.20 of income bonds, \$41.08 of new preferred stock and 6.021 shares of new common stock.

(13) The committee consists of Frederick H. Ecker, John W. Stedman and Reeve Schley.

The objections were overruled and the plan was approved. The debtor, the refunding mortgage trustee, the holding company, Railroad Credit Corporation and A. C. James Company have appealed.

Neither the debtor nor the refunding mortgage trustee was adversely affected by the plan or by the order approving it. Hence neither of them was entitled to appeal. *King v. Buttolph*, 9 Cir., 30 F.2d 769; *Loomis v. Gila County*, 9 Cir., 101 F.2d 827; *In re Western Pacific R. R. Co.*, 9 Cir., 122 F.2d 807. Their appeals are therefore dismissed.

The holding company objected to the plan on the ground that it is not fair and equitable,¹⁴ but is unfair and inequitable, in that it excludes the holding company from participation in the reorganization. The objection states that the debtor is not insolvent, but has property of a value greatly in excess of its liabilities. Obviously, if the statement is true, the holding company is entitled to participate in the reorganization, and its exclusion therefrom is unfair and inequitable. Thus, to determine the question raised by the holding company's objection, it was necessary to determine the value of the debtor's property as of the effective date of the plan—January 1, 1939. *Consolidated Rock Products Co. v. Du Bois*, 312 U.S. 510, 517-525.

Railroad Credit Corporation objected to the plan on the ground that it is unfair and inequitable, in that it discriminates unfairly in favor of Recon

(14) Bankruptcy Act, § 77(e)(1), 11 U.S.C.A. § 205(e)(1).

struction Finance Corporation and the holders of first mortgage bonds now outstanding.¹⁵ A. C. James Company objected to the plan on the ground that it is unfair and inequitable in that it discriminates unfairly in favor of Reconstruction Finance Corporation, Railroad Credit Corporation and the holders of first mortgage bonds now outstanding.¹⁶

That Reconstruction Finance Corporation, Railroad Credit Corporation, A. C. James Company and the holders of first mortgage bonds now outstanding should participate in the reorganization is conceded. Fairness requires that their participation should be in proportion to the value of their respective claims. The question raised by the objections of Railroad Credit Corporation and A. C. James Company was whether the plan complies with that requirement. To determine this question, it was necessary to determine, as of the effective date of the plan, the value of (1) each of the claims of Reconstruction Finance Corporation,¹⁷ (2) the claim of Railroad Credit Corporation, (3) the claim of A. C. James Company, (4) the claims of the holders of first mortgage bonds now outstanding, (5) the \$10,000,000 of new first mortgage bonds, (6) the \$21,219,075 of income bonds, (7) the 318,502.97 shares of new preferred stock and (8) the 319,441 shares of new

(15) See footnotes 8-11.

(16) See footnotes 8-12.

(17) Reconstruction Finance Corporation has two claims—one as holder of trustees' certificates, one as holder of the debtor's notes.

common stock which the plan provides shall be distributed to said claimants.

To determine the value of the above mentioned claims, it was necessary to determine the value of (1) the debtor's entire property, (2) the property subject to the first mortgage now outstanding, (3) the \$18,999,500 of refunding bonds pledged to secure the claims of A. C. James Company, Railroad Credit Corporation and Reconstruction Finance Corporation and (4) the other collateral pledged to secure each of said claims. To determine the value of the refunding bonds, it was necessary to determine the value of (1) the property subject to the refunding mortgage only and (2) the property subject both to the refunding mortgage and to the first mortgage now outstanding. This, of course, necessitated a determination as to which of the debtor's property is, and which is not, subject to each mortgage. *Consolidated Rock Products Co. v. Du Bois*, supra.

To determine the value of the new first mortgage bonds, income bonds, new preferred stock and new common stock mentioned above, it was necessary to determine the value of (1) the debtor's entire property, (2) the property which would be subject to the new first mortgage and (3) the property which would be subject to the income mortgage.

Subsection (e) of § 77 provides: "If it shall be necessary to determine the value of any property for any purpose under this section, the [Interstate Commerce] Commission shall determine such value

and certify the same to the court in its report on the plan." In this case, as has been seen, it was necessary to determine the value of (1) the debtor's entire property, (2) each of the claims of Reconstruction Finance Corporation, (3) the claim of Railroad Credit Corporation, (4) the claim of A. C. James Company, (5) the claims of the holders of first mortgage bonds now outstanding, (6) the \$10,000,000 of new first mortgage bonds, (7) the \$21,219,075 of income bonds, (8) the 318,502.97 shares of new preferred stock, (9) the 319,441 shares of new common stock, (10) the property subject to the first mortgage now outstanding, (11) the \$18,999,500 of refunding bonds pledged to secure the claims of Reconstruction Finance Corporation, Railroad Credit Corporation and A. C. James Company, (12) the other collateral pledged to secure each of said claims, (13) the property subject to the refunding mortgage only, (14) the property subject both to the refunding mortgage and to the first mortgage now outstanding, (15) the property which would be subject to the new first mortgage and (16) the property which would be subject to the income mortgage. It thus became the duty of the Commission to determine these values and certify them to the court. That duty was not performed.

Lacking the requisite valuation data, the court was in no position to exercise the "informed, independent judgment" which appraisal of the fairness of a plan of reorganization entails. Consoli-

dated *Rock Products Co. v. Du Bois*, *supra*. See, also, *National Surety Co. v. Coriell*, 289 U.S. 426, 436; *First National Bank v. Flershem*, 290 U.S. 504, 525; *Case v. Los Angeles Lumber Products Co.*, 308 U.S. 106, 115. Therefore, instead of approving the plan, the court should have entered an order dismissing the proceeding or, in its discretion and on motion of any party in interest, referring the proceeding back to the Commission for further action.¹⁸

The District Court's opinion states (34 F. Supp. 501): "It cannot be gainsaid that the Commission knows all about the debtor, its property, its history, financial and otherwise, its traffic and revenue, and its financial structure. No official body in the country is better qualified by reason of experience, ability and specialized knowledge than is the Commission to find the ultimate facts as to the debtor in relation to any of the matters mentioned." The statement indicates a possible misconception. Subsection (e) of § 77 provides:

"Upon the certification of a plan by the Commission to the court, the court shall give due notice to all parties in interest of the time

(18) Subsection (e) of § 77 provides: "If the judge shall not approve the plan, he shall file an opinion, stating his conclusions and the reason therefor, and he shall enter an order in which he may either dismiss the proceedings, or in his discretion and on motion of any party in interest refer the proceedings back to the Commission for further action * * *"

within which such parties may file with the court their objections to such plan, and such parties shall file, within such time as may be fixed in said notice, detailed and specific objections in writing to the plan and their claims for equitable treatment. The judge shall, after notice in such manner as he may determine to the debtor, its trustee or trustees, stockholders, creditors, and the Commission, hear all parties in interest in support of, and in opposition to, such objections to the plan and such claims for equitable treatment. After such hearing, and without any hearing if no objections are filed, the judge shall approve the plan if satisfied that: (1) It complies with the provisions of subsection (b) of this section, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; (2) the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of such hearing, are reasonable, are within such maximum limits as are fixed by

the Commission, and are within such maximum limits to be subject to the approval of the judge; (3) the plan provides for the payment of all costs of administration and all other allowances made or to be made by the judge . . ."

In determining whether a plan of reorganization satisfies the requirements of subsection (e), the court is not concluded by any determination made by the Commission, but may, and must, exercise its own independent judgment; and this is true whether such determination relates to value or to some other subject. Initially, however, the duty of determining the value of any property for any purpose under § 77 rests on the Commission, not on the court.

Order reversed and proceeding remanded with directions to dismiss it or, in the court's discretion and on motion of any party in interest, refer it back to the Commission for further action.

[Endorsed]: Opinion. Filed Nov. 28, 1941. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 9714.

WESTERN PACIFIC RAILROAD CORPORATION, et al.,

Appellants,

vs.

INSTITUTIONAL BONDHOLDERS COMMITTEE, et al.,

Appellees.

DECREE

Appeal from the District Court of the United States for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, Southern Division, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the appeals of the Western Pacific Railroad Company and Irving Trust Company, as trustee, be, and hereby are dismissed, and that the order of the said District Court in this cause approving a plan of reorganization be, and hereby is reversed, with costs in favor of the appellants, The Western Pacific Railroad Corporation, Railroad Credit Corporation and A. C. James Co., and against the

appellees, and that this cause be, and hereby is remanded to the said District Court with directions to dismiss it or, in the court's discretion and on motion of any party in interest, refer it back to the Commission for further action.

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellants, The Western Pacific Railroad Corporation, Railroad Credit Corporation, and A. C. James Co., recover against the appellees for their costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered November 28, 1941. Paul B. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT TO RECORD CERTIFIED UN-
DER RULE 38 OF THE REVISED RULES
OF THE SUPREME COURT OF THE
UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two thousand six hundred and seventy-six (2,676) pages, numbered from and including 1 to and including 2676, to be a full, true and correct copy of the entire record, excluding certain original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellees, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 17th day of December, 1941.

[Seal] . . .

PAUL P. O'BRIEN,

Clerk.

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

In the Matter of

THE WESTERN PACIFIC RAILROAD COMPANY, a corporation, Debtor.

WESTERN PACIFIC RAILROAD CORPORATION, a corporation, THE WESTERN PACIFIC RAILROAD COMPANY, a corporation, and IRVING TRUST COMPANY, a corporation, as substituted Trustee under the General and Refunding Mortgage of Western Pacific Railroad Company, A. C. JAMES CO., a corporation, THE RAILROAD CREDIT CORPORATION, a corporation,

Appellants.

vs.

INSTITUTIONAL BONDHOLDERS COMMITTEE and RECONSTRUCTION FINANCE CORPORATION, CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO and SAMUEL ARMSTRONG, Trustees of the First Mortgage of the Western Pacific Railroad Company, a corporation,

Appellees.

Upon Appeals from the District Court of the United States for the Northern District of California, Southern Division.

PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9714

In the Matter of

THE WESTERN PACIFIC RAILROAD
COMPANY, a corporation,

Debtor.

THE WESTERN PACIFIC RAILROAD COR-
PORATION, a corporation, THE WESTERN
PACIFIC RAILROAD COMPANY, a corpo-
ration, and IRVING TRUST COMPANY, a
corporation, as substituted Trustee under the
General and Refunding Mortgage of the West-
ern Pacific Railroad Company, A. C. JAMES
CO., a corporation, THE RAILROAD
CREDIT CORPORATION, a corporation,
Appellants,

vs.

INSTITUTIONAL BONDHOLDERS' COMMIT-
TEE and RECONSTRUCTION FINANCE
CORPORATION,

Appellees.

It is ordered that that portion of the decree
entered herein November 28, 1941 dismissing the
appeals of the Irving Trust Company, as Trustee,
and Western Pacific Railroad Company is set aside.
The petitions for rehearing of the Irving Trust

Company, as Trustee, and Western Pacific Railroad Company for other relief are denied.

WILLIAM DENMAN

United States Circuit Judge

CLIFTON MATHEWS

United States Circuit Judge

ALBERT LEE STEPHENS

United States Circuit Judge

[Endorsed]: Filed Feb. 12, 1942, as amended by order of February 16, 1942. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9714

A. C. JAMES CO., et al.,

Appellants,

vs.

INSTITUTIONAL BONDHOLDERS COMMITTEE, et al.,

Appellees.

DECREE

Appeal from the District Court of the United States for the Northern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United

States for the Northern District of California, Southern Division, and was duly submitted;

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the order of the said District Court in this cause approving a plan of reorganization be and hereby is reversed, with costs in favor of the appellants and against the appellees and that this cause be, and hereby is remanded to the said District Court with directions to dismiss it or, in the court's discretion and on motion of any party in interest, refer it back to the Commission for further action.

It is further ordered, adjudged, and decreed by this Court, that the appellants recover against the appellees for their costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered November 28, 1941, as amended by amended order of February 12, 1942. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED UN-
DED RULE 38 OF THE REVISED RULES
OF THE SUPREME COURT OF THE
UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing three (3) pages, numbered from and including 2681 to and including 2683, to be a full, true and correct copy of the order of February 12, 1942, as amended by order of February 16, 1942, on petitions for rehearing, and decree as amended by amended order of February 12, 1942, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellees Ecker, et al., and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 20th day of February, 1942.

(Seal)

PAUL P. O'BRIEN,

Clerk.

[fol. 2685] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1942.

No. 7

ORDER ALLOWING CERTIORARI—Filed April 27, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2686] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1942

No. 8

ORDER ALLOWING CERTIORARI—Filed April 27, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2687] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1942

No. 20

ORDER ALLOWING CERTIORARI—Filed April 27, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Vol. 2688] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1942

No. 33

ORDER ALLOWING CERTIORARI—Filed April 27, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Vol. 2689] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1942

No. 61

ORDER ALLOWING CERTIORARI—Filed April 27, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

